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No. 99-128

IN THE
Supreme Court of the United States

ALASKA CIVIL LIBERTIES UNION,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alaska

REPLY BRIEF OF PETITIONER

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Respondent's brief in opposition is remarkable in its failure to offer any substantive explanation of how the Alaska Supreme Court's decision comports with this Court's decisions, notably *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604 (1996). Neither the "vastness," "remoteness," or other purportedly "unique" characteristics of Alaska cited by Respondent, Opp'n 6-7, 22-23, is sufficient to justify the severe restrictions on First Amendment rights at issue in this case. Alaska's citizens have no less right to express their political views or associate with others for political purposes than citizens of the other 49 states. The Alaska Court's decision to uphold an individual contribution limit less than half of that ap-

proved in *Buckley*, to preclude certain non-resident contributions in their entirety, and to impose more stringent contribution and expenditure restrictions on its political parties than on any other group, directly contradicts the constitutional doctrines established in *Buckley* and extended in *Colorado Republican*. Respondent cites no authority of this Court supporting the Alaska Court's decision.

Respondent instead urges the Court to deny review of the Alaska Court's decision contending for the first time in this litigation that Petitioner lacks standing. Specifically, Respondent argues that the AkCLU fails to satisfy the "injury-in-fact" element of the federal standing doctrine as explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and then concludes that this Court is without jurisdiction to entertain the AkCLU's petition for certiorari. Opp'n 12-13, 16.

Respondent's conclusory assertions that the AkCLU lacks standing are overstated and erroneous. Respondent relies exclusively on the "direct standing" test of *Lujan*, and fails even to identify the more applicable "associational standing" doctrine set out in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), and recently applied by this Court in *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544 (1996). The AkCLU submits that the donative records set out in or summarized by the 1,800-page record so-often cited by Respondent establish that the 1996 campaign finance restrictions cause concrete injury to the AkCLU and its constituent members—a number of whom are candidates for public office who receive affected contributions; others of whom make contributions to candidates and groups in ways impaired by the Alaska restrictions. These evidentiary attributes of standing are more than sufficient to meet constitutional

requirements, particularly given the fundamental First Amendment interests restricted by the Alaska statute. "[I]n First Amendment cases we have relaxed our rules of standing without regard to the relationship between the litigant and those whose rights he seeks to assert precisely because application of those rules would have an intolerable, inhibitory effect on freedom of speech." *Eisenstadt v. Baird*, 405 U.S. 438, 445 n. 5 (1972) (citations omitted). *See Secretary of State of Md. v. J. H. Munson Co.*, 467 U.S. 947, 956 (1984).

In none of the proceedings below did Respondent raise a claim that Petitioner lacked standing. Typically, such claims are raised as litigation unfolds and both parties present evidence beyond the summary assertions set out in the original complaint. The factual prerequisites to establish standing, in fact, vary at different junctures of a case. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.' " *Lujan*, 504 U.S. at 561, *citing Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990).

Respondent expressly acknowledged standing before the state court. *See* Opp'n 15. Indeed, counsel for the State entered into an agreement with Petitioner's counsel that standing would not be challenged in the proceedings.[1]

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[1] This agreement among counsel is reflected in Respondent's brief before the state superior court: "While the case law might provide some basis for attacking the ACLU's standing to challenge at least some of the reforms, a ruling on standing or ripeness grounds would only serve to delay a decision on these issues of paramount public concern. The State has determined that such delay would not serve the public interest. That interest is better served by a prompt resolution of the questions raised. . . ." Def.'s Mem. Opp'n Summ. J. 34-35 (Mar. 13, 1998).

While Petitioner recognizes that this Court has an independent obligation to determine the standing of litigants before it, Respondent's actions should not be allowed to defeat this Court's review of an important federal constitutional issue.

Respondent's current position has the further—and curious—effect of denying any preclusive effect to the Alaska Supreme Court's decision. *See ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989). As the *ASARCO* Court stated, "Although the judgment of a state court on issues of federal law normally binds the parties in any future suit even if that suit is brought separately in federal court, we have occasionally cautioned that such a judgment may well *not* bind the parties if the state court's conclusions about federal law were not subject to any federal review." *Id.* at 621 (emphasis in original).

Accordingly, neither the jurisdictional limitations arising under 28 U.S.C. § 1257 nor principles of res judicata or collateral estoppel apply if federal standing requirements are not satisfied and this Court is prevented from exercising its duty to be the "final arbiter" of the important federal constitutional issues raised in this case. *See Doremus v. Board of Educ. of Hawthorne*, 342 U.S. 429, 434 (1952) (conclusive disposition of an issue of federal law cannot occur in the absence of an opportunity for federal court review); *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940) (this Court is responsible for assuring "that state courts will not be the final arbiters of important issues under the federal constitution"). Respondent's assertion that the AkCLU lacks standing to obtain federal review of the Alaska court's decision thus estopps the state from denying any party—including the AkCLU—access to federal court to adjudicate precisely the same issues.

If the Court believes that standing is an issue in this case, it should grant the petition for certiorari and ask the parties for full briefing on the issue, as has been the Court's practice in other similar cases. *See, e.g., Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 65 (1997); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 540-41 (1985); *Secretary of Navy v. Avrech*, 418 U.S. 676, 677 (1974) (per curiam). Through this procedure the Court will have the benefit of full and fair, adversarial briefing on the matter, rather than the necessarily truncated arguments available in briefs filed in conjunction with the original petition for certiorari.

CONCLUSION

For the reasons stated in the petition and this reply, the petition for writ of certiorari should be granted.

Respectfully submitted,

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